



PLANNING COMMISSION STAFF REPORT JUNE 28, 2012

Project:	PRIVATE OPEN SPACE GENERAL PLAN AMENDMENT – Citywide – (PLN2012-00262)
Proposal:	To consider an amendment to the General Plan Open Space land use designations to reinstitute a General Open Space land use designation and amend the land use designation and make additional map corrections for certain Private Open Space designated properties citywide.
Recommendation:	Recommend approval to the City Council
Location:	Citywide
People:	Kelly Diekmann, Principal Planner (510) 494-4540; kdiekmann@fremont.gov
Environmental Review:	The project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that it is not a project which has the potential for causing a significant effect on the environment.
General Plan:	Private Open Space
Zoning:	Open Space, Planned Districts, Residential, Industrial

EXECUTIVE SUMMARY

The City of Fremont adopted its new General Plan in December 2011, which included changes to the Open Space land use designations and land use map from the previous 1991 General Plan. The City received a petition on May 29, 2012, requesting that a citizen-initiated General Plan Amendment be placed on the ballot for the November general election, which, if it were to pass, would place restrictions on properties designated Private Open Space. The Private Open Space land use designation is one of six open space land use designations in both the previous and current General Plan. As part of the City's ongoing General Plan implementation and in reviewing the Private Open Space petition, staff identified inconsistencies in the intent of the Private Open Space land use designation as mapped to certain parcels in the General Plan. Concerns include limitations on non-traditional "private" open space uses such as cemeteries, public and quasi-public facilities, use of property not used for park and open spaces, and existing single-family homes. Staff has identified approximately 41 parcels to consider for a General Plan Amendment from Private Open Space to General Open Space or Resource Conservation and Public Use. Additionally, staff has identified a mapping error for the rear yards of 14 existing developed residential lots and one industrial property wherein the abutting residential or industrial designations respectively are appropriate designations. Staff recommends that the Planning Commission recommend the City Council reinstitute the General Open Space land use designation and make corresponding land use map changes for certain specified properties.

BACKGROUND AND PREVIOUS ACTIONS

The City of Fremont adopted its new General Plan on December 13, 2011. The new General Plan changed the previous 1991 General Plan's six designations of open space to a new classification system with six designations of open space. The new designations did not necessarily have a direct correlation to the old designations.

Table 1: Open Space Land Use Designations¹

Current General Plan	1991 General Plan
City Park	Agriculture
Hill Face (Measure T)	Hill Face Open Space (Measure T)
Hill (beyond ridgeline, Measure T)	Hill Open Space (Measure A, T)
Hillside (Measure A)	Institutional Open Space
Private Open Space	Open Space
Resource Conservation & Public	Private Open Space

1. Alphabetical list of designations, there is no cross referenced correlation of current General Plan to 1991 General Plan

The major changes included creating a City Park designation and removing the General Open Space and Agriculture designations. The Private Open Space designation purpose and intent was fundamentally unaltered as it was intended to designate private property for restricted open space or recreation purposes. The previous Open Space designation was a significant component of the 1991 General Plan as it allowed for limited residential development potential of up to one unit per acre and was not considered as restricted open space, but instead was intended to allow for very low density while preserving open space characteristics. With the new General Plan establishing the outer limit of urban growth and focusing on infill rather than City expansion, the purpose of allowing for development generally in Open Space was of limited applicability going forward, and was dropped from the new General Plan. Due to the constraints of the new Open Space designations, the City remapped some former Open Space and Agricultural designated properties as Private Open Space to reflect that they were privately held. The Implementation Element of the General Plan specifies corresponding existing zoning districts for each of the current designations.

On May 29, 2012, the City Clerk received a petition to place the "Protect Fremont Open Space Initiative of 2012" (Initiative) on the ballot of the upcoming November General Election. The Initiative provides that both properties designated as Private Open Space in the General Plan and properties zoned or used as private open space within Planned Districts be restricted and may not be developed or redeveloped without holding a citywide election or upon a unanimous finding by the City Council of a taking of property rights. The Initiative language applies to properties that are greater than two acres in size. The City has forwarded the Initiative to the Alameda County Registrar of Voters for an official review and certification of sufficiency of the signatures per the requirements of the state Election Code. The City anticipates receiving the results of the verification by the end of July. If the Initiative qualifies, the City Council will take action to either adopt the Initiative in an unaltered form, or to place it on the ballot of the general election.

PROCEDURE FOR TONIGHT'S HEARING

At tonight's hearing, the Planning Commission is charged with completing two tasks:

1. Consider proposed amendments to the Land Use and Implementation Elements of the General Plan to reinstitute a "General Open Space" land use designation and amend the land use designation of certain properties designated Private Open Space to the new General Open Space land use designation.
2. Consider corrections of mapping errors of Private Open Space designation on certain properties to Low Density Residential and Tech Industrial.

PROJECT DESCRIPTION

The proposed General Plan Amendment includes creating the new "General Open Space" land use designation to recognize use of private property in a manner that allows for viable use of property consistent with the open space character and constraints of individual properties.

Proposed General Open Space Land Use Designation (insert on page 2-32 of the Land Use Element):

General Open Space - The General Open Space land use designation applies to private land with an open space character that may be vacant or contain a previously established use. Properties within this designation may be subject to constraints of soil instability, property access, water and flood levels, landslides, fault zones, or slopes in excess of 30 percent that restrict the use of the property with structures. Allowable uses for this designation include cemeteries, public facilities, recreation facilities, quasi-public facilities, one single-family home on a legally established lot, grazing, and small scale cultivation. New lots require a minimum size of 20 acres. Undeveloped portions of property within the General Open Space designation should be set aside for conservation purposes.

The new General Open Space designation would be applied to 37 properties ranging in size from approximately 10,000 square feet to 25 acres (Exhibit A). In addition, there are four PG&E parcels along Auto Mall Parkway recommended to be re-designated Resource Conservation/Public Open Space (RCP). These actions would change the land use designation of approximately 165 acres of Private Open Space designated property. There would be approximately 440 acres remaining as Private Open Space.

The public hearing notice originally indicated the creation of two General Plan land use designations of Open Space with one specifically for a cemetery classification of the seven cemeteries that are in the City. Upon further consideration and review, staff has not included a distinct cemetery designation due to its limited applicability and has instead incorporated it as a use allowable in General Open Space.

Map Correction

There are 14 properties located in Niles with frontage along Montecito Drive that are shown to have a 24-foot wide Private Open Space designation through the rear yards. These are previously developed lots with a Low Density Residential land use designation. The subject properties were part of a lot

combination approved in 1987 removing a previous California Nursery Company easement. The Private Open Space designation was a mistake. The 24-foot rear yard area would be revised to the Low Density Residential designation. Additionally, there is a 0.98 acre parcel near Milmont Drive that was designated as Private Open Space where the surrounding properties are designated Tech Industrial. The subject parcel is privately held, but contains an Alameda County Flood Control District channel easement. The 0.98-acre parcel would be revised as Tech Industrial.

Analysis:

General Plan Conformance

The existing General Plan identifies a range of open space land use designations. There are two designations intended to be applied to public oriented open space, as City Park or Resource Conservation/Public Open Space. The Hill Area open space designations are the result of voter approved initiatives, Measure A and Measure T for hill area protection. The Private Open Space land use designation is the only designation specifically intended to apply to privately held property that has been used as open space. The subject properties subject to the amendment are all designated Private Open Space. Notable uses related to these parcels include seven existing cemeteries, single-family homes, utility providers, vacant land, and the KGO radio tower along State Route 84 Dumbarton Bridge.

Goal 2-6: Open Space

An open space “frame” around Fremont, complemented by local parks and natural areas, which together protect the City’s natural resources, provide opportunities for recreation, enhance visual beauty, and shape the City’s character.

Policy 2-6.1 Open Space Land Use Designations

Maintain development regulations which distinguish between different types of open space, in conformance with the voter approved initiatives and in recognition of the different types of activities that take place on undeveloped land.

Findings for approval of a General Plan Amendment are that the proposed change is in the public’s interest and the amendment would not conflict with other components of the General Plan. The current range of Open Space land use designations is inadequate to address the variety and type of uses on the subject properties of this proposed amendment. The Resource Conservation and Public Use designation could be applied to some public and quasi-public held properties that are currently designated as Private Open Space, but privately owned properties would not appropriately fit the intent of that designation. Staff recommends applying the Resource Conservation and Public Use designation to four PG&E parcels, consistent with how it has been applied in other areas of the City. In this instance the proposed amendment is in the public interest and consistent with the Goal 2-6 and Policy 2-6.1 in that it recognizes past and present use of private property with the unique and varied character while encouraging open space preservation and compatibility. The Implementation Element of the General Plan would include reference to the new designation and identify the current Open Space (O-S) zoning district or Planned District zoning as the means of implementing the new land use designation.

ENVIRONMENTAL REVIEW

The project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that it is not a project which has the potential for causing a significant effect on the environment. The proposed changes clarify the intent of the Open Space designations to reflect existing conditions and allow for continuation and range of uses consistent with the current use and General Open Space land use designations. The revised designations and changes to the land use map do not physically alter the environment or allow for additional development potential that was not previously considered as part of the General Plan.

PUBLIC NOTICE AND COMMENT

City Council was presented with a staff report at their June 5, 2012 meeting explaining the Initiative and their responsibilities and options under the Election Code. The Planning Commission held a study session on June 12, 2012, to review the Initiative and explore potential General Plan Amendments related to Private Open Space designated properties.

Public hearing notification is applicable. A total of 58 notices were mailed to owners of property within proposed for the General Plan Amendment and map correction. The notices to owners and occupants were mailed, and a Public Hearing Notice was published by *The Argus*, on June 7, 2012.

ENCLOSURES

Exhibits:

- Exhibit "A" Open Space General Plan Amendment Map (Available online at <http://www.fremont.gov/DocumentCenter/Home/View/17989>)
- Exhibit "B" [Map Correction Properties](#)

Informational Items:

- Informational 1 [Comment Letter](#)

RECOMMENDATION

1. Recommend that the City Council find the proposed General Plan Amendment is in the public interest and consistent with the General Plan.
2. Recommend that the City Council approve the proposed General Plan Amendment adding the General Open Space land use designation.
3. Recommend that the City Council approve the proposed General Plan Amendment amending the land use designation of Private Open Space to General Open Space and Resource Conservation/ Public Open Space for the specified properties shown in Exhibit A and make the map corrections as shown in Exhibit B.